COLLAS CRILL

Amendments to Cayman Islands Beneficial Ownership Regime

JANUARY 2018

In July 2017, the legislation implementing the Cayman Islands Beneficial Ownership Regime came into force.

As a reminder, the Regime requires that all Cayman Islands Companies and LLCs deemed "in scope" complete and maintain a beneficial ownership register (a **BOR**) and notify the contents of such register to its Corporate Services Provider (**CSP**) who, in turn, reports the contents of the BOR to the Competent Authority.

Companies and LLCs who benefit from certain exemptions under the Regime are considered "out of scope".

Previously under the Regime, out of scope entities were not required to maintain a BOR, nor were they required to make a filing of their exempted status to the Competent Authority.

Subsequent amendments to the legislation were published in November 2017 introducing new exemptions, limiting certain existing exemptions and removing some prior exemptions. As a result, all Cayman Islands Companies and LLCs should review their original classification analysis, take remedial action to update their BOR where necessary and start to maintain a BOR if a previous exemption on which they relied no longer exists or has been limited such that it no longer applies to them.

We have detailed some of the amendments here.

Expanded Exemption Criteria

1. The Amendments have now increased the number of applicable exemptions for Companies and LLCs. The new provisions exempt Companies and LLCs from maintaining a BOR where such entity:

- is regulated in a jurisdiction included in a list published by the Anti-Money Laundering Steering Group of countries and territories whose anti-money laundering legislation is deemed to be equivalent to the anti-money laundering legislation of the Cayman Islands (the **AMLSG List**). This list replaces the list previously referred to as the "Schedule 3" countries list;
- is a general partner of any special purpose vehicle, private equity fund, or collective investment scheme or investment fund that is registered or holds a license under a relevant Cayman Islands regulatory law, or is managed operated or promoted by an Approved Person;
- holds, directly, a legal or beneficial interest in the shares of a legal entity which is licensed in the Cayman Islands under a relevant Cayman Islands regulatory law and where the conditions of such license include full disclosure of the legal and beneficial ownership of the licensee.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

2. The additional exemptions also extend to subsidiaries of Exempted Entities, i.e. where an entity is regulated in a jurisdiction on the AMLSG List it is now considered to be out of scope, and consequently its subsidiaries (as defined in the Amendments) will also be considered out of scope of the Regime.

3. The Amendments have confirmed that Exempted Entities must provide their CSP with written confirmation of their exemption, including information detailing:

- the specific grounds of the exemption; and
- provide supplementary information necessary to evidence such exemption.

4. The CSP, on having received notice from the Exempted Entity, must now file the information pertaining to the Exempted Entity with the Competent Authority.

SIBL Excluded Persons no longer considered Exempted Entities

Previously the Regime included Companies and LLCs registered as excluded persons under section 5(4) of the Securities Investment Business Law (2015 Revision) (**SIBL**) as Exempted Entities and as such they were out of scope.

The Amendments have clarified that Excluded Persons will no longer be Exempted Entities, therefore they are now required to complete and maintain a BOR and to notify the contents of the BOR to their CSP.

Clarification on "Approved Persons"

Excluded Persons will no longer be an "Approved Person" for the purposes of the Regime, and therefore any Companies and LLCs having previously relied on this exemption should review their original analysis. Where no other exemption applies, any Company or LLCs will need to notify their CSP of the contents of their BOR as soon as practicable.

Clarification has been received that a Company/LLC may not conclude it is exempt solely on the basis that it has appointed an "Approved Person" to provide its registered office in the Cayman Islands.

Where a Companies and LLCs have appointed individuals who are employees of a Cayman Islands licensed manager or director firm, this will not in and of itself be enough for that entity to be considered "managed, arranged, administered, operated or promoted by an "Approved Person".

Important Timelines for Compliance

The Regime provides a grace period for Companies and LLCs to implement their BOR and be fully compliant with the Regime until 30 June 2018. Reporting by CSPs to the Competent Authority has commenced, so if your entity's information is incomplete for any reason, your status may show on these reports as "Enquiries Pending". It is important therefore that all Companies and LLCs provide all relevant information to their CSP as soon as possible .

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Companies and LLCs have until 30 June 2018 to implement their BOR without penalty; however after that deadline financial penalties against Companies and LLCs which have failed to comply with their obligations (for example a fine of CI$25,000 on summary conviction for each contravention) will apply.

Companies and LLCs have an ongoing obligation to continuously monitor any changes which may impact their status or the contents of their BOR, and notify the CSP of all changes as soon as possible, so the Competent Authority is receiving the most up to date information.

What should Companies and LLC's be doing now?

All Companies and LLCs should now conduct their assessments as to whether they are in or out of scope for the purposes of the Regime, particularly in light of the Amendments, as updates to their existing BOR may be required.

Be prepared to supply certified copies of required due diligence documentation for Registrable Persons and Relevant Legal Entities which your CSP will need in order to confirm the BOR as soon as possible, but no later than 30 June 2018.

Exempted Entities must now also submit confirmation of their grounds for exemption and written evidence of such exemption to the CSP as a matter of urgency.

Further Information

The above is an overview of the Amendments and how they impact the Regime. It is not intended to be legal advice.

Collas Crill is able to assist Companies and LLCs in determining if the Regime applies to them and the steps necessary to fulfil their obligations under the Regime.

Collas Crill Corporate Services Limited as a licensed CSP (including the provision of registered office services), is also able to assist with the establishment and maintenance of the BOR where it provides registered office services to that Company or LLC.

For assistance with any of the above matters please liaise with your usual contact at Collas Crill Corporate Services Limited or any of the attorneys at Collas Crill.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.